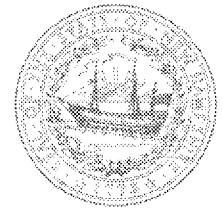


The State of New Hampshire
Department of Environmental Services



Robert R. Scott, Commissioner

February 21, 2018

The Honorable John T. O'Connor
Chair, Environment and Agriculture Committee
Legislative Office Building, Room 303
Concord, NH 03301

RE: HB 1766, An Act relative to remediating the Coakley Landfill in Greenland

Dear Chair O'Connor and Members of the Committee:

During your Committee's hearing on HB 1766 yesterday, I was asked to submit a written summary of the oral testimony that I provided on behalf of the New Hampshire Department of Environmental Services. The purpose of this letter is to provide that summary, as well as some background information regarding the Coakley Landfill site.

The Coakley Landfill site is a federal Superfund site located in Greenland and North Hampton that was discovered to have impacted nearby drinking water wells in the early 1980s. It was listed as a federal National Priorities List (NPL) Superfund site in 1986. Following that listing, investigations were made to characterize the contamination and evaluate options for cleaning it up. By the early 1990s, remedies were selected and implemented. The remedies were embodied in court-order consent decrees, which govern the work at the site. The landfill wastes were consolidated and covered with an engineered cap, and groundwater quality has been monitored since that time to document the reduction in the concentration and extent of contamination with volatile organic compounds. In 2016, sampling of monitoring wells at the site indicated the presence of perfluorochemicals (PFCs) in groundwater at the site. Subsequent sampling determined that PFCs were also detected in surface waters that drain the site.

As a federal Superfund NPL site, authority over site management rests primarily with the U.S. Environmental Protection Agency (EPA). NHDES serves in an active support role to EPA to ensure that the responsible parties comply with the legal agreements governing investigation, remediation, and overall management of the site, and has done so since the site's initial discovery and listing. NHDES is well aware of and understands the concerns of the bill sponsors relative to the groundwater and surface water impacts caused by this facility. NHDES shares those concerns, and has been working together with EPA and the responsible parties to determine the extent and nature of the PFC contamination discovered in monitoring wells at the facility, evaluate whether it puts nearby drinking water wells at risk, and to determine whether additional remedial measures are necessary to manage the hazards associated with these new contaminants. If determined to be necessary to protect human and ecological health, additional remedial measures will be designed and implemented. Until that time, local

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drinking water wells will continue to be monitored to ensure the quality and safety of drinking water.

HB 1766 would declare that an imminent hazard (under RSA 147-A: 13) exists at the Coakley Landfill site, and direct NHDES to compel the responsible parties (the Coakley Landfill Group) to implement within one year a 1994-vintage remedial option that was considered during the original Remedial Investigation and Feasibility Study for the site. NHDES opposes this bill for four primary reasons.

First, NHDES disagrees that an imminent hazard under RSA 147-A:13 exists at the site, as is declared in Section 2 of the bill. If the Department believed that were true, it would have already worked with EPA to order immediate mitigation of the hazard. While all parties share concerns regarding the presence of PFCs in site groundwater, NHDES is unaware of any exposures to groundwater or surface water that pose an "imminent and substantial hazard to human health or to the environment," which is the standard outlined under RSA 147-A:13.

Second, Section 3 of the bill would direct NHDES to compel the CLG to implement a specific remedial alternative, pumping and treatment of groundwater at the site, that was evaluated in 1994. This option was developed and evaluated using data, technology, and experience that are now more than 25 years old. If an alternate remedy at the site is to be implemented, good sense would dictate that a new evaluation be performed to determine the most effective option, using all the past data collected, new data not yet collected, and the current state of the science.

Third, NHDES is a signatory to the past court-ordered consent decrees with EPA and the CLG. These documents govern the work at the site. As we understand it, the actions that NHDES would be directed to take under Section 3 of the bill would violate the provisions those decrees.

Finally, the interference with existing legal agreements raises a broader concern regarding the bill's potential impact on NHDES's work on sites in the federal Superfund program. Coakley is one of twenty-one (21) federal Superfund NPL sites in our state. They are all subject to the federal Comprehensive Environmental Response, Compensation and Liability Act (commonly known as "CERCLA"), and EPA is the lead agency on each of these sites. Legally binding documents (like the above-described Coakley consent decrees) govern the work at these sites. NHDES believes that passage of this bill would disrupt the confidence of site owners and responsible parties who negotiate these agreements, and potentially have a chilling effect on our ability to secure agreements with such parties at any Superfund sites. Responsible parties are often required to make significant long-term financial commitments to investigation, remediation, and long-term care and maintenance of sites and their remedial systems. Under the Superfund program, parties are able to make these difficult commitments in part because they have the benefit of legal constraints on the manner in which they may be required to undertake these activities

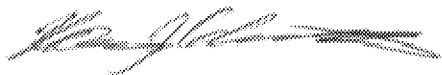
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and expend funds. If these parties come to expect that all of that may be upended or overturned by a single piece of state legislation targeted at their facility, there would be little incentive to cooperate.

For these reasons, NHDES cannot support this bill, and recommends that the important ongoing work at the site be allowed to proceed, so that any hazards can be fully characterized, and protective solutions developed.

Thank you again for the opportunity to provide testimony on HB 1766. Should you have further questions or need additional information, please feel free to contact me at 271-1997, or via email at Michael.Wimsatt@des.nh.gov

Sincerely yours,



Michael J. Wimsatt, Director
Waste Management Division

Environmental
Services

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Services
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cc: Sponsors of HB 1766: Representatives Messmer, Cushing, Bean, Edgar, Le,
Gordon, Senator Martha Fuller Clark